(2001) 04 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2817 of 1998

P.C. Wadhwa APPELLANT

Vs

State Bank of Patiala RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2001) 3 CivCC 317 : (2001) 3 RCR(Civil) 473

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Mr. P.C. Wadhwa In-Person, for the Appellant; Mr. H.N. Mehtani, for the Respondent

Judgement

V.K. Jhanji, J.—This is plaintiffs'' second appeal.

2. Plaintiffs filed suit for declaration to the effect that they are liable to pay simple interest @ 10.5% p.a. on the loan amount and for mandatory injunction directing the defendants to re-cast the loan account after charging interest @ 10.5% p.a. and return the excess amount charged, if any, to them. Trial Court dismissed the suit. In appeal, the first Appellate Court affirmed the judgment and decree passed by the trial Court.

3. In brief, the facts are that under the Scheme known as "ARDC Scheme", loan was sanctioned by the State Bank of Patiala (defendant No. 1) (for short the Bank). The purpose of the Scheme was advancing loan for construction of godowns in the State of Haryana for leasing out the same to Food Corporation of India (for short the FC1). Under the said scheme, the then Agricultural Refinance and Development Corporation (for short the ARDC) (now National Bank of Agricultural and Rural Development) was to refinance the Bank for advancing loan to the persons for construction of go-downs. In the case of the plaintiffs, they applied for a term loan of Rs. 6 lacs for construction of godown at Bahadurgarh District Rohtak. On receipt of the said application, the Bank vide letter dated 5.1.1980 addressed to the plaintiffs sanctioned a loan of Rs. 6 lacs.

In regard to interest, the condition was that interest will be charged @, 3% above the ARDC lending rate with a minimum of 10.5%. On sanction of the ioan, the Bank applied to ARDC for refinancing vide letter dated 11.3.1980, ARDC approved the proposal of the Bank for advancing loan to the plaintiffs to the extent of Rs. 6 lacs for being refinanced under the ARDC Scheme. The ARUC sanctioned a loan of Rs. 4.80 lacs to the Bank by way of refinance. The sanction was subject to certain terms and conditions contained in Schedules I, II, III enclosed with the said letter and also Memorandum of general agreement dated 26.3.1975 executed by the Bank in favour of ARDC. Clause 5 of Schedule I in regard to rate of interest reads as under :-

"5. Rate of interest :

(a) The rate of interest for refinance sanctioned by the Corporation will be such as may be determined by the Corporation at the time of each drawal of refinance from the Corporation. At present, the Corporation charges interest at 7-1/2% per annum (from 15.3.1979) on the refinance provided by it in respect of this Scheme. The rate of interest may be varied by the Corpora-lion from time to time.

(b) The interest shall be payable to the Corporation every half year on I January and 1 July in each year or any other date agreed by the Corporation.

(c) The Bank shall charge interest to the ultimate borrower at the rate of 10-1/2% per annum."

4. The ARDC in pursuance of its agreement with the Bank, released the necessary advance to the Bank and the Bank thereafter disbursed the loan amount to the plaintiffs. Before the loan was disbursed, loan agreement, Exhibit P-7 was executed between the Bank and the plaintiffs. Clause 2 of the agreement provided for charging of interest. The same read as under :-

"2. The Bank shall advance to the borrowers upto a limit of Rs. 6,00,000/- (Rupees six lacs only) in the said Agricultural Term Loan account and shall charge interest @ 3% above the Agricultural Refinance and Development Corporation (ARDC) refinance rate with a minimum of 10-1/2% per annum in case the refinance from ARDC is available subject to the changes as may be prescribed by ARDC from time to time otherwise at the rate of 1% over the State Bank advance rate rising and failing therewith, with a minimum of 14% per annum subject to the changes as may be prescribed by the Reserve Bank of India from time to time. The interest shall be charged as quarterly rests."

5. It is not in dispute that from the amount so advanced by the Bank, plaintiffs constructed godown at Ba-hadurgarh and the same was let out to FCI. Plaintiffs also arranged for direct payment of rent by the FCI to the Bank. From the rent which was being paid by the FCI to the Bank on behalf of the plaintiffs. Bank started charging interest @ 10.5% with quarterly rests. Plaintiffs protested in regard to charging of interest with quarterly rest. The Bank vide letter dated

8.7.1998 partly conceded the request of the plaintiffs and started charging interest @ 10.5% with half yearly rests. Plaintiffs again protested and contended that in view of the agreement between the Bank and the ARDC and letter dated 11.3.1980 vide which proposal was accepted by the ARDC to refinance the loan to the tune of Rs. 4.80 lacs, the interest chargeable by the Bank cannot exceed 10.5% p.a. The precise grievance of the plaintiffs was charging of interest at half yearly rest. The Bank rejected the claim of the plaintiffs and that led to the filing of the suit by the plaintiffs for declaration to the effect that they are liable to pay simple interest @ 10.5% p.a. on the loan amount and for mandatory injunction directing the defendants !o re-cast the entire account of loan after charging interest @ 10.5% p.a. and return the amount to the plaintiffs, if charged in excess.

6. Upon notice of the suit, defendants contested the suit and contended that the plaintiffs were liable to pay interest@ 10.5% p.a. with half yearly rests. They con tended that the plaintiffs vide clause 2 of the agreement executed by them in favour of the Bank, had agreed to pay interest @ 3% above the ARDC lending rate with a minimum of 10.5% with quarterly rests but by way of concession to the plaintiffs, the Bank later on agreed to charge interest from the plaintiffs @ 10.5% with half yearly rests and the difference in the amount of interest after affording concession, was adjusted. Defendants also contended that the account of loan has since been finally adjusted and as such the plaintiffs are estopped from contending that only simple interest was charge able.

7. Trial Court, relying upon Clause 2 of the agreement, Exhibit P-7 dismissed the suit by holding that vide Clause 2 of the agreement, Exhibit P-7, the plaintiffs had agreed to pay interest @ 3% above the ARDC lending rate with a minimum of 10.5% p.a. and in that clause it was also mentioned that interest shall be charged at quarterly rests. Trial Court also held that by way of concession, the Bank agreed to charge interest at half yearly rests and, therefore, the plaintiffs are liable to make payment of interest of half yearly rests. In appeal by the plaintiffs, the first Appellate Court affirmed the finding of the trial Court in this regard. Hence this second appeal.

8. Mr. P.C. Wadhwa. one of the plaintiffs arguing the appeal on behalf and also on behalf of other plaintiffs, contended that the Bank was found by the sanction letter dated 5.1.1980 and also letter dated 11.3.1980 vide which the ARDC agreed to refinance the loan to the . Bank on the terms and conditions stated in the said letter. He contended that the loan agreement had to be in conformity with the terms and conditions which the Bank had settled with the ARDC for advancing loan to the plaintiffs. He contended that the agreement, Exhibit P-7 has not been correctly read by the Courts below.

9. Against this, learned Counsel appearing on behalf of the Bank, Mr. H.N. Mehtani, Advocate contended that as per the agreement, the Bank could charge interest @ 10.5% with quarterly rests but by way of concession, interest was charged at half yearly rests and now the plaintiffs are estopped from contending

that the agreement did not provide for charging of interest with periodical rest.

10. After hearing the learned Counsel and on going through the record, I am of the view that the judgment and decree of the Courts below is not sustainable in law.

11. Loan of Rs. 6 lacs was sanctioned in favour of plaintiffs under the ARDC Scheme for the construction of godown to be let out to the FCI for storing food grains. The granting of loan to the plaintiffs was directly linked and connected with the refinancing of loan by the ARDC to the Bank, Clause 5(a) to (c) of letter dated 11.3.2000 from ARDC to the Bank vide which refinancing of loan was approved, specifically provided that the Bank shall charge interest from the ultimate borrower @ 10.5% p.a. on the amount refinanced by the ARDC to the Bank and ARDC was to charge interest @ 7.5% p.a. from the Bank. The interest amount was payable to ARDC every half year on 1st of January and 1st of July in each year. Mr. Mehlani, counsel appearing on behalf of the Bank fairly conceded that the ARDC charged interest @ 7.5% (simple interest) though interest amount was payable twicc a year. Reading of Clause 2 of the loan agreement relating to interest shows that it was in two parts. 1st part provided that in case refinance from ARDC is available, then interest charged from the plaintiffs was to be @ 3% above the ARDC lending rate with a minimum of 10.5% p.a. Second part provided that in case refinance is not available from the ARDC and the total amount is advanced by the Bank, then the interest to be charged from the plaintiffs was to be @ 1% over the State Bank finance rate rising and falling therewith with a minimum of 14% subject to the changes as may be prescribed by the Reserve Bank of India from time to time. The condition that interest shall be charged at quarterly rests related only to the second part of clause 2 of the agreement meaning thereby that in case refinance was not available from ARDC and the entire amount was to be financed by the Bank, then the plaintiffs were liable to pay interest with a minimum of 14% p.a. with quarterly rests. It is not by way of concession that the Bank had decided to charge interest at half yearly rests instead of quarterly rests as stipulated under the agreement but it was on account of the agreement between the Bank and the ARDC. The Bank while reducing the interest from quarterly rests to half yearly rests vide letter dated 8.7.1988 issued by its Regional Manager to the plaintiffs, should have instructed the Branch Manager to charge interest on the loan amount only @ 10.5% p.a. simple interest instead of half yearly intervals. As a matter of fact, charging of interest by the Bank at half yearly rests was taken up by the plaintiff with the ARDC and the ARDC addressed letter dated 10.8.1989 (Annexure P-17) to the plaintiffs in which it was specifically stated that since the amount had been disbursed after 15th of March, 1979, rate of interest to be charged by the Bank from the borrower would be 10.5% p.a. only and the Bank should charge only simple interest on regular accounts. It was though stated therein that the Bank has discretion to charge interest on quarterly or longer rests but as noticed earlier, this condition would have applied only if the loan amount had not been refinanced by the ARDC or the account was not regular. Admittedly, the accoun!

of the plaintiffs was regular. They had not committed any default in making payment of instalments and out ofthe total loan amount of Rs. 6 lacs advanced to the plaintiffs, a sum of Rs. 4.80 lacs was refinanced by the ARDC to the Bank. This being the case. I am of the view that the Bank was not entitled to charge interest at half yearly rests on the amount refinanced by the ARDC. In case, the Courts had read agreement, Exhibit P-7 in context with letter dated 5.1.1980 vide which the Bank had sanctioned the loan and letter dated 11.3.1980 vide which loan was refinanced by the ARDC. They would not have committed an error in coming to the conclusion that the interest chargeable from the plaintiffs was @ 10.5% p.a. with half yearly rests.

12. Faced with this situation, Mr. Mehtani, appearing on behalf of the Bank contended that the suit filed by the plaintiffs, in the present form was not maintainable. He contended that instead of suit for declaration and mandatory injunction, plaintiffs should have filed suit for recovery of amount. This very contention was urged before the first Appellate Court but was rejected and the reasoning given by the first Appellate Court in para 30 of the judgment being not shown to be erroneous. I am of the view that the finding of the first Appellate Court that the suit filed by the plaintiffs in the present form was maintainable, is not to be interfered with.

13. No other point was urged.

14. For the reasons recorded above, present appeal is allowed and the judgment and decree of the Courts below is set aside and suit of the plaintiffs is decreed to the effect that the plaintiffs were liable to pay simple interest @ 10.5% p.a. on the amount of Rs. 4.80 Lacs which was refinanced by the ARDC to the Bank for advancing loan to the plaintiffs. Suit for the plaintiffs for mandatory injunction is also decreed and defendants are directed to re-cast the loan account of the plaintiffs by charging simple interest @ 10.5% p.a. and in case the amount has been charged in excess, the same shall be refunded to the plaintiffs within a period of three months from today. No order as to costs.

15. Appeal allowed.

